BLAKE
LAW FIRM

June 7, 2022

*Sent via Email Only to:*

Andrew Flores, Esq.
LAW OFFICE OF ANDREW FLORES
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RE: ***Amy Sherlock, et al. // Gina M. Austin, et al.***
San Diego Superior Court Case Number 37-2021-0050889-CU-AT-CTL

Dear Mr. Flores,

This office represents Defendant STEPHEN LAKE ("Lake") in the above-referenced action. We have reviewed the First Amended Complaint ("FAC") filed by Plaintiffs AMY SHERLOCK ("SHERLOCK"), T.S., S.S., and ANDREW FLORES ("FLORES"). Please consider this correspondence as our formal attempt to meet and confer pursuant to Code of Civil Procedure § 430.41 regarding deficiencies in the FAC against LAKE.

While we are aware that for purposes of a demurrer the allegations in the FAC must be regarded as trust, we believe it is important to correct a number of misrepresentations made in the FAC.

**Statement of Facts**

LAKE and SHERLOCK's husband, Michael "Biker" Sherlock ("BIKER"), were long-time friends and companions, in addition to being brothers-in-law. LAKE viewed BIKER as family. BIKER's business, Dregs skateboards, was hit hard by the recession and he began experiencing financial issues. This created stress on BIKER on many levels – on him personally, on his relationship with his parents, and on his relationship with SHERLOCK. At the same time, LAKE observed BIKER becoming increasingly depressed and anxious. His prior abundance of confidence shrunk, he began having fainting spells and seizures, and became generally confused, all of which contributed to his inability to find meaningful employment. LAKE believed, however, that BIKER was an entrepreneur at heart and, more importantly, was his friend and brother, so LAKE encouraged BIKER to "think big" and to look for what the next big opportunity might be.

As such, LAKE, on multiple occasions, offered financial assistance to BIKER to fund various business ventures, including BIKER's foray into the San Diego medical marijuana market. Notably, and contrary to the allegations in the FAC, LAKE and BIKER were never "partners."

*The Ramona Property*

In July 2014, BIKER approached LAKE about a property he was looking at in Ramona – 1210 Olive Street, Ramona, CA 92065 ("Ramona Property"). At the time BIKER was unemployed

and struggling to find a job, which created stress on BIKER personally and on his relationship with SHERLOCK. While LAKE initially balked at becoming involved in the Ramona Property, the foregoing coupled with the fact that BIKER was family eventually overrode his reservations. LAKE eventually purchased the Ramona Property, *as his sole and separate property*, on or about January 8, 2015. The Ramona Property remains to this day in LAKE's name and has not been transferred out of LAKE's name since he acquired ownership.

One of the reasons for LAKE's reconsideration of his purchase of the Ramona Property was due to the involvement of Renny Bowden ("Bowden"), who was part of a group also interested in the Ramona Property. Bowden and LAKE have a longstanding relationship and LAKE found Bowden's potential involvement as such an unlikely coincidence that it made LAKE feel more comfortable with his decision to move forward with the purchase. Because neither Bowden nor BIKER had the capital to purchase the Ramona Property and the prior owner was not interested in leasing the property, BIKER and Bowden approached LAKE with the idea that LAKE would purchase the Ramona Property, build it out, and then lease the property back to them as part of a larger business they intended to pursue.

After closing, LAKE considered how to proceed as this was all new to him. His discomfort with the industry and lack of knowledge thereof fueled his decision to proceed as a landlord. At some point thereafter, Bowden sought and received the Conditional Use Permit ("CUP") for the Ramona Property, which was issued in the name of Bowden. BIKER never had an interest in the Ramon Property nor, to the best of LAKE's knowledge, did BIKER ever have an interest in the Ramona CUP.

*The Balboa Property*

Prior to April 24, 2015, David Chadwick ("Chadwick") formed Leading Edge Real Estate, LLC ("LERE"), for which he served as CEO. At some point unknown to LAKE, Chadwick, BIKER, BIKER's partner, Brad Harcourt ("Harcourt"), all partnered up to pursue the purchase of 8863 Balboa Avenue, Unit E, San Diego, CA 92123 ("Balboa Property"). On or about June 30, 2015, Chadwick resigned as CEO of LERE, at which point BIKER, on information and belief, was appointed as CEO.

Chadwick's resignation occurred after several events pertinent to this dispute. On June 9, 2015, LAKE made a $289,560.68 loan to BIKER as a two-week bridge loan. The loan was memorialized via a promissory note. The loan was to be used to purchase 8863 Balboa Avenue, Unit E, San Diego, CA 92123 ("Balboa Property"). Notably, LAKE and BIKER had a clear, direct conversation of the importance of the loan being paid back in a timely manner; BIKER agreed and pledged that if the loan were not timely paid back, the Balboa Property would be deeded to LAKE as payment with the intent that LAKE would sell the Balboa Property to recoup his investment. BIKER was adamant in pledging the Balboa Property as collateral for LAKE's loan.

There were immediate problems with the Balboa Property. One such problem had to do with the HOA at the premises, which had recently amended its governing documents to prohibit the operation of any marijuana dispensaries. On June 16, 2015, BIKER, Chadwick, and Harcourt

received a legal opinion advising that any attempts to overturn this amendment would be very unlikely. Thus, BIKER and the others were unable to legally use the Balboa Property for its intended use.

On September 9, 2015, the promissory note went into default. LAKE discussed the default with both BIKER and Harcourt and made it clear that they needed to make good on the terms of the note and security agreement. LAKE conveyed to both that he had no desire to be a part of the business and simply wanted the loan proceeds repaid. BIKER and Harcourt pledged to follow through as they agreed. Given these reassurances, LAKE allowed BIKER and HARCOURT more time to procure financing to pay off the LAKE bridge loan.

By October 26, 2015, BIKER and Harcourt still had not procured financing. LAKE, BIKER, and Harcourt all went to lunch to discuss solutions. Their primary solution was to transfer the Balboa Property over to LAKE's company, High Sierra Equity LLC ("High Sierra") in an effort to payoff the defaulted loan. After some thought, LAKE agreed to the proposal.

On December 2, 2015, LAKE gave BIKER a call to check in on him, which is something he did regularly during that time due to some changes that LAKE observed in BIKER's demeanor and behavior. After a few minutes on the call, LAKE realized that BIKER was having a tough morning and cancelled his meetings so he could be with BIKER. When LAKE arrived at the house, Harcourt was there with BIKER. The two were reviewing paperwork and signing documents. LAKE subsequently learned that one of the documents was the LERE cancellation. LAKE did not witness BIKER signing the cancellation but knows for certain that it was the intent of BIKER and Harcourt, in furtherance of the October 26 proposal, to cancel LERE and transfer the Balboa Property to High Sierra. On December 3, 2015, BIKER took his own life.

*Events Subsequent to BIKER's Passing*

On or about December 4, 2015, while LAKE was assisting SHERLOCK and her family with dealing with BIKER's passing, he came across a $1M life insurance policy that SHERLOCK believed had lapsed. Nevertheless, LAKE provided the policy to his resources in the insurance industry, who discovered that the premium had recently been paid and SHERLOCK was the beneficiary of the policy.

On December 13, 2015, LAKE reached out to SHERLOCK to see if they could get together to discuss some of BIKER's business loose ends. The two met on December 14, 2015. It was during this conversation that LAKE explained to SHERLOCK, for the first time, that he had loaned BIKER $285,000 to save the Balboa Property and that BIKER was unable to pay him back, which resulted in BIKER defaulting and LAKE taking the property back as collateral. SHERLOCK expressed her happiness that LAKE was protected and that the Balboa Property remained in the family.

In or around August 2016, the Balboa Property went into escrow for $375,000. LAKE and SHERLOCK discussed the sale and SHERLOCK reiterated how happy she was that LAKE and his family would be getting their money back. SHERLOCK was undoubtedly aware that the

Balboa Property, along with the Balboa CUP, were being sold in an effort to allow LAKE to recoup his investment. On September 19, 2016, the Balboa Property closed and funds were received.

Significantly, SHERLOCK was not only made aware of the decision to sell the Balboa Property but was involved in the decision-making process. SHERLOCK was involved in the decision not to litigate with the HOA at the Balboa Property. SHERLOCK was involved in the decision not to risk any more money and to "turn the chapter" on the Balboa Property. And SHERLOCK was informed of the details pertaining to the sale of the Balboa Property.

LAKE is certainly sympathetic to the turmoil that SHERLOCK has faced over the years and remains deeply concerned about her well-being. However, it is unfortunate that SHERLOCK has opted to ignore years of history and familial relations in favor of her outlandish and unfounded conspiracy theories that are apparently based on untenable and untrue facts.

**Standard on Demurrer**

A demurrer tests the sufficiency of the allegations contained within the complaint. *Pacifica Homeowners' Assn. v. Wesley Palms Retirement Community* (1986) 178 Cal.App.3d 1147, 1151. It is well settled law that the presumptions are always against the pleader, and all doubts are to be resolved against him/her, for it is to be presumed that he/she stated his case as favorably as possible. *Curci v. Palo Verde Irrigation Dist.* (1945) 69 Cal.App.2d 583, 585. As will be discussed in more detail below, even if the Court assumes the "facts" alleged in the Complaint as true, SHANNON has failed to state facts against CONSTRUCTION sufficient to maintain *any* cause of action against it.

Moreover, the *absence* of fact is also fatal to SHERLOCK's claims. "If a fact necessary to the pleader's cause of action is not alleged, it must be taken as having no existence." (*Ibid*). The court may sustain a demurrer without leave to amend following repeated attempts if it concludes that the defect is caused by an absence of facts, rather than a lack of skill in stating them. *Loeffler v. Wright* (1910) 13 Cal.App. 224, 232; *Banerian v. O'Malley* (1974) 42 Cal.App.3d 604, 616. The burden is on the plaintiff to show in what manner she can amend her complaint, and how the amendment would change the legal effect of her pleading. *Goodman v. Kennedy* (1976) 18 Cal 3d. 335

**The FAC Is Subject To Demurrer**

SHERLOCK asserts causes of action against LAKE for 1) Violation of the Cartwright Act, 2) Conversion, 3) Civil Conspiracy (apparently, two counts), 4) Declaratory Relief, and 5) Unfair Competition. None of the claims can be maintained against LAKE and each are subject to demur.

*Violation of the Cartwright Act*

SHERLOCK cannot maintain a cause of action against LAKE for violation of the Cartwright Act because 1) she lacks standing to assert the claim and 2) the claim is not sufficiently pled.

A plaintiff suing under the Cartwright Act must be within the "target area" of the antitrust violation to have standing; i.e., they must have suffered direct injury as a result of the anticompetitive conduct. *Cellular Plus, Inc. v. Sup. Ct. (U.S. West Cellular)* (1993) 14 Cal.App.4th 1224, 1232; *Vinci Waste Mgmt., Inc.* (1995) 36 Cal.App. 4th 1811, 1815. An "antitrust injury" is the "type of injury the antitrust laws were intended to prevent, and which flows from the invidious conduct which renders defendants' act unlawful." *Kolling v. Dow Jones & Co.* (1982) 137 Cal.App.3d 709, 723. Courts interpreting the Cartwright Act's antitrust standing requirement have consistently followed the "market participant rule," requiring the plaintiff to "show an injury within the area of the economy that is endangered by a breakdown of competitive conditions." *In re Napster, Inc. Copyright Litig.* (N.D. Cal.2005) 354 F.Supp.2d 1113, 1125-26 (citing *MGM Studios, Inc. v. Grokster, Ltd.* (C.D.Cal. 2003) 269 F.Supp.2d 1213, 1224; *Kolling v. Dow Jones & Company, Inc.* (1982) 137 Cal.App.3d 709, 724. "Any person who is injured in his or her *business* or *property* by reason of anything forbidden or declared unlawful by this chapter…." *Bus & Prof Code* § 16750.

SHERLOCK lacks standing to bring a claim. First and foremost, SHERLOCK is not a "market participant". The FAC is unclear as to what "market" SHERLOCK claims to have participated it but assuming *arguendo* that she is referring to the medical marijuana industry, there is no showing of an injury in that area. Put simply, SHERLOCK, a private individual with no ties to the medical marijuana industry, is not within the "target area" of the alleged antitrust violation.

Standing issues aside, even if SHERLOCK were able to overcome this threshold issue, her cause of action is not sufficiently pled. To state a cause of action for conspiracy, a complaint must allege (1) the formation and operation of the conspiracy, (2) the wrongful act or acts done pursuant thereto, and (3) the damage resulting from such act or acts. *Chicago Title Ins. Co. v. Great Western Financial Corp*. (1968) 69 Cal.2d 305, 316. It is incumbent on the complaining party to allege and prove that the party's business or property has been injured by the very fact of the existence and prosecution of the unlawful trust or combination; that is, to establish an actual injury attributable to something the statutory provisions were designed to prevent. *Kaiser Cement Corp. v. Fischbach and Moore, Inc.* (9th Cir. 1986) 793 F.2d 1100.

A high degree of particularity is required in the pleading of violations prescribed by the statutory provisions governing combinations in restraint of trade. *DeCambre v. Rady Children's Hospital-San Diego* (2015) 235 Cal.App.4th 1; *Motors, Inc. v. Times Mirror Co.* (1980) 102 Cal.App.3d 735, 742. The complaint must allege a purpose to restrain trade and a nexus to the injury traceable to actions in furtherance of that purpose. *Id*. "General allegations of the existence and purpose of the conspiracy are insufficient, and the appellants must allege specific overt acts in furtherance thereof." *Id* at p. 318. Plaintiff must allege certain facts in addition to the elements of an alleged unlawful act so that the defendant can understand the nature of the alleged wrong and so that discovery is not merely a blind fishing expedition for some unknown wrongful acts. *Quelimane Co. v. Stewart Title Guaranty Co.* (1998) 19 Cal.4th 26.

Other than owning the land that the CUPs flowed from, the FAC is utterly devoid of any facts tying LAKE to the alleged conspiracy. There are no allegations that LAKE was even involved

in the medical marijuana industry – because he was not – let alone that he conspired with these other defendants to prevent competition within the industry. Nor is there any allegation or indication that SHERLOCK, herself, was engaged in the industry or was even contemplating entering the industry. SHERLOCK has also failed to adequately allege damage to business or property. Again, there is no allegation that SHERLOCK had a business within the cannabis industry.

Moreover, SHERLOCK cannot allege damage to property. As it relates to LAKE, the facts and pleadings clearly establish that *LAKE* purchased the Ramona Property, which he owns to this day, and that LERE purchased the Balboa Property. (*FAC* ¶¶ 67, 70). There are no allegations that BIKER ever had any interest in either property. In addition, the CUPs are not, and were not, the "property" of BIKER or SHERLOCK. A conditional use permit is a *property* right that runs with the *land*, *not* to the *individual permittee*. *Imperial v. McDougal* (1977) 19 Cal.3d 505; *Malibu Mountains Recreation v. Los Angeles* (1998) 67 Cal.App.4th 359, 368; *Anza Parking Corp. v. City of Burlingame* (1987) 195 Cal.App.3d 855, 858. Without a showing of injury to business or property, SHERLOCK cannot maintain her first cause of action against LAKE.

*Conversion*

SHERLOCK's conversion cause of action is similarly flawed as it is premised on the conversion of property by LAKE that SHERLOCK never owned. The "Sherlock Property" allegedly converted is defined to include BIKER's "interest in the Partnership Agreement, LERE, and the Balboa and Ramona CUPs." (*FAC* ¶ 71). "Conversion is the wrongful exercise of dominion over the property of another. The elements of a conversion claim are: (1) the plaintiff's ownership or right to possession of the property; (2) the defendant's conversion by a wrongful act or disposition of property rights; and (3) damages." *Lee v. Hanley* (2015) 61 Cal.4h 1225, 1240. To prove a cause of action for conversion, the plaintiff must show the defendant acted intentionally to wrongfully dispose of the property of another." *Duke v. Superior Court* (2017) 18 Cal.App.5th 490, 508. It is generally acknowledged that conversion is a tort that may be committed only with relation to personal property and not real property. *Munger v. Moore* (1970) 11 Cal.App.3d 1, 7.

As it relates to the Balboa Property and Ramona Property, neither can be the subject of a conversion cause of action as each is real property. That notwithstanding, there has been no showing of any interest held by BIKER in either property. LAKE purchased the property as his sole and separate property and currently owns the property as such; thus, it is unclear how LAKE could convert his own property. The Balboa Property was purchased by LERE, not BIKER, and was sold with SHERLOCK's consent in an effort to repay LAKE's loan. Similarly, SHERLOCK cannot maintain a claim for conversion of the CUPs. As referenced above, a conditional use permit is a *property* right that runs with the *land*, *not* to the *individual permittee*. *Imperial v. McDougal* (1977) 19 Cal.3d 505; *Malibu Mountains Recreation v. Los Angeles* (1998) 67 Cal.App.4th 359, 368; *Anza Parking Corp. v. City of Burlingame* (1987) 195 Cal.App.3d 855, 858. In other words, both CUPs belonged to the *land*, not to BIKER or any other individual. Put another way, SHERLOCK has failed to meet the first prong of her conversion claim – her ownership or right to possession of any of the property allegedly converted.

As it relates to the alleged conversion of BIKER's interest in LERE, the FAC alleges that LERE was formed by BIKER and Harcourt. (*FAC* § 69). Moreover, the FAC goes on to allege that LERE was later dissolved. (*FAC* § 78). There is no allegation that that LAKE ever had an interest in LERE, that he was responsible for the dissolution of LERE, or that he ever received any benefit from the dissolution of LERE. Likewise, it is unclear what SHERLOCK is referring to when she references the "Partnership Agreement" (*see FAC* ¶ 71). The term is not defined anywhere in the FAC and there is no specificity as to what this alleged partnership entailed.

*Conspiracy (Counts I and II)*

SHERLOCK's Third and Seventh Causes of Action both allege a "civil conspiracy" against LAKE. Though not entirely clear, both causes of action are seemingly based on SHERLOCK's faulty conversion claim.

For there to be a conspiracy, there must be an unlawful agreement, an overt act committed in furtherance of the conspiracy, and damage from that act. *Applied Equipment Corp. v. Litton Saudi Arabia Ltd.* (1994) 7 Cal.4th 503. Conspiracy is not itself a substantive basis for liability. *Favila v. Katten Muchin Rosenman LLP* (2010) 188 Cal.App.4th 189. Civil conspiracy is not an independent tort under California law. *Pavicich v. Santucci* (2000) 85 Cal.App.4th 382; *Everest Investors 8 v. Whitehall Real Estate Limited Partnership XI* (2002) 100 Cal.App.4th 1102. There is no separate tort of civil conspiracy, and there is no civil action for conspiracy to commit a recognized tort unless the wrongful act itself is committed and damage results therefrom. *Richard B. LeVine, Inc. v. Higashi* (2005) 131 Cal.App.4th 566; *Mehrtash v. Mehrtash* (2001) 93 Cal.App.4th 75. When a plaintiff asserts the existence of a civil conspiracy among the defendants to commit the tortious acts, the source of any substantive liability arises out of an independent duty running to the plaintiff and its breach; tort liability cannot arise vicariously out participate in the conspiracy itself. *Ferris v. Gatke Corp* (2003) 107 Cal.App.4th 1211.

Here, there can be no conspiracy by LAKE to commit conversion since there was no conversion by LAKE. A conspiracy cause of action cannot survive on its own and without adequately pleading the existence of any underlying tort, i.e., conversion, SHERLOCK cannot maintain either of her conspiracy causes of action against LAKE.

*Unfair Competition*

Though SHERLOCK asserts a cause of action pursuant to § 17200 of the California Business and Professions Code ("UCL"), it is unclear how these allegations relate to LAKE. Indeed, LAKE is not specifically referenced anywhere in the cause of action. In construing the FAC in a light most favorable to SHERLOCK, LAKE will assume that the unfair competition relates to the Cartwright Act violations found in SHERLOCK's first cause of action.

California's unfair competition law permits civil recovery for "any unlawful, unfair, or fraudulent business act or practice and unfair, deceptive, untrue, or misleading advertising. *Cal. Bus. & Prof. Code* § 17200. A private person may assert a UCL claim only if she (1) has suffered injury in fact and (2) has lost money or property as a result of the unfair competition. *Hall v. Time,*

*Inc.* (2008) 158 Cal.App.4th 847, 852. The second prong of this standing test "imposes a causation requirement. The phrase 'as a result of' in its plain and ordinary sense means 'caused by' and requires a showing of a causal connection or reliance on the alleged misrepresentation." *Id*.

As with her claims related to the alleged Cartwright Action violation, there is nothing in the FAC that gives any indication that SHERLOCK was a market participant, or even attempted to become a market participant, in the San Diego cannabis market. There is no ascertainable injury in fact nor has SHERLOCK lost money or property, as more fully discussed above, by way of the facts alleged in the FAC. Moreover, SHERLOCK's failure to plead a Cartwright Act violation bars her from asserting a UCL claim on the same grounds.

*Declaratory Relief*

As it relates to LAKE, SHERLOCK asserts a cause of action for declaratory relief seeking a judicial determination that the transfers of BIKER's interests in LERE and the Balboa CUP are void. For the reasons discussed above, BIKER did not have an interest in the Balboa CUP and there is nothing in the FAC that alleges that LAKE either had an interest in LERE or was otherwise involved in the dissolution of LERE. Thus, the cause of action is merely repetitive of SHERLOCK's other prior claims.

**Demand for Immediate Dismissal**

SHERLOCK's factual recitation is grossly inaccurate, as one would expect from a party who had no involvement with either the Ramona Property or Balboa Property. Her characterizations of LAKE are borderline defamatory. And, given the documentation that LAKE has of his various discussions with SHERLOCK, it is apparent that SHERLOCK has not a shred of evidence to support any of these specious allegations or causes of action.

LAKE demands that, as to him, the FAC be dismissed in its entirety. In exchange, LAKE is willing to waive all attorney's fees and costs incurred in the case to date and would agree to a full, mutual release of the parties claims against each other, including any potential crossclaims that LAKE may have against SHERLOCK and BIKER's estate.

Please advise no later than ***5:00 PM*** on ***June 14, 2022*** whether SHERLOCK intends to dismiss or amend her complaint.

Sincerely,

**BLAKE LAW FIRM**

ANDREW E. HALL, ESQ.